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ENVIRONMENTAL PROTECTION AGENCY

[FRL-9502-3; EPA-HQ-OW-2011-0141 and EPA-HQ-2011-0150]

Draft National Pollutant Discharge Elimination System (NPDES) General Permits for Discharges Incidental to the Normal Operation of a Vessel

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of draft permit issuances and notice of public hearing.

SUMMARY: EPA Regions 1, 2, 3, 4, 5, 6, 7, 8, 9, and 10 are publishing for comment a draft NPDES Vessel General Permit (VGP) that would authorize discharges incidental to the normal operation of non-military and non-recreational vessels greater than or equal to 79 feet in length. If finalized, this draft VGP would replace the current VGP, which was issued in December 2008 and expires on December 19, 2013. EPA is also proposing a draft NPDES Small Vessel General Permit (sVGP) to authorize discharges incidental to the normal operation of non-military and non-recreational vessels less than 79 feet in length. EPA is proposing the sVGP to authorize discharges from vessels less than 79 feet in length, because the P.L. 110-299 moratorium (subsequently extended by P.L. 111-215) expires on December 18, 2013. These laws generally provide that no NPDES permits shall be required for incidental discharges (except discharges of ballast water) from vessels less than 79 feet and commercial fishing vessels. EPA is soliciting comment on today's draft VGP and draft sVGP. Comments on any aspect of the permit, including the fact sheet discussions and economic analyses supporting the Agency's tentative decisions, are welcome. Note that in many places, EPA requests comments on specific aspects of

today's draft permits; these specific solicitations are meant to highlight for commenters areas on which they may wish to focus, most often because these areas involve provisions not contained in the 2008 VGP. The requests for comment on specific aspects of the permit should not be interpreted as discouraging comment on other provisions or aspects of the draft permits.

DATES: Comments must be submitted on or before [Insert date 75 days after publication in the Federal Register].

ADDRESSES: Submit your comments, identified by Docket ID No. **EPA-HQ-OW-2011-0141** for the VGP or Docket ID No. **EPA-HQ-OW-2011-0150** for the sVGP, by one of the following methods:

- www.regulations.gov: Follow on-line instructions for submitting comments.
- Email: ow-docket@epa.gov.
- Mail: Original and three copies to: Water Docket, Environmental Protection Agency, Mail Code: 4101T, 1200 Pennsylvania Ave., N.W., Washington DC 20460.
- Hand Delivery: EPA Docket Center, Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue N.W., Washington, DC 20004. Such deliveries are only accepted during the Docket's normal hours of operation, and special arrangements should be made for deliveries of boxed information.

FOR FURTHER INFORMATION CONTACT: For further information on the VGP, including how to obtain copies of the draft general permit and fact sheet, contact Ryan Albert at EPA Headquarters, Office of Water, Office of Wastewater Management, Mail Code 4203M, 1200 Pennsylvania Ave, N.W., Washington D.C. 20460; or at tel.: 202-564-0763; or e-mail at vgp@epa.gov. For further information on the sVGP, including how to obtain copies of the draft

general permit and fact sheet, contact Robin Danesi at EPA Headquarters, Office of Water, Office of Wastewater Management, mail code 4203M, 1200 Pennsylvania Ave, N.W., Washington D.C. 20460; or at tel.: 202-564-1846; or e-mail at svgp@epa.gov.

SUPPLEMENTARY INFORMATION: This supplementary information is organized as follows:

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B. Summary of the draft sVGP

C. Draft permit provisions on which EPA is specifically soliciting comment

D. Analysis of economic impacts of draft VGP and draft sVGP

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I. General Information

A. Does This Action Apply to Me?

This action applies to vessels operating in a capacity as a means of transportation that have discharges incidental to their normal operation into waters subject to this permit, except recreational vessels as defined in Clean Water Act section 502(25) and vessels of the Armed Forces as defined in Clean Water Act section 312(a)(14). Affected vessels are henceforth referred to as non-military, non-recreational vessels. Unless otherwise excluded from coverage by Part 6 of the VGP and Part 5 of the sVGP, waters subject to this permit means waters of the U.S. as defined in 40 CFR section 122.2. That provision defines "waters of the U.S." as certain inland waters and the territorial sea, which extends three miles from the baseline. More specifically, CWA section 502(8) defines "territorial seas" as "the belt of the seas measured from the line of the ordinary low water along that portion of the coast which is in direct contact with the open sea and the line marking the seaward limit of inland waters, and extending seaward a distance of three miles." Note that the Clean Water Act (CWA) does not require NPDES permits for vessels or other floating craft operating as a means of transportation beyond the territorial seas, i.e., in the contiguous zone or ocean as defined by the CWA sections 502(9), (10). See CWA section 502(12) and 40 section CFR section 122.2 (definition of "discharge of a pollutant"). This permit, therefore, does not apply in such waters.

Non-military, non-recreational vessels greater than 79 feet in length operating in a capacity as a means of transportation that need NPDES coverage for their incidental discharges will generally be covered under the VGP. Similarly situated vessels less than 79 feet in length may be covered under the VGP, or may instead opt for coverage under the sVGP (unless those vessels have 8 or more cubic meters of ballast water capacity, in which case, they must seek coverage under the VGP).

B. How Can I Get Copies of These Documents and Other Related Information?

1. *Docket.* EPA has established an official public docket for this action: Docket ID No. **EPA–HQ–OW– 2011–0141** for the VGP and Docket ID No. **EPA–HQ–OW– 2011–0150** for the sVGP. The official public docket is the collection of materials, including the administrative record required by 40 CFR 124.18, for the final permit. It is available for public viewing at the Water Docket in the EPA Docket Center, (EPA/ DC) EPA West, Room 3334, 1301 Constitution Ave., NW., Washington, DC 20460. Although all documents in the docket are listed in an index, some information is not publicly available, *i.e.*, Confidential Business Information (CBI) or other information whose disclosure is restricted by statute. Publicly available docket materials are available electronically through http:// www.regulations.gov and in hard copy at the EPA Docket Center Public Reading Room, open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Public Reading Room is (202) 566–1744 and the telephone number for the Water Docket is (202) 566–2426.

2. *Electronic Access.* You may access this Federal Register document electronically through the EPA Internet under the ‘‘Federal Register’’ listings at http://www.epa.gov/fedrgstr/.
An electronic version of the public docket is available through the Federal Docket Management System (FDMS) found at http://www.regulations.gov. You may use the FDMS to view public

comments, access the index listing of the contents of the official public docket, and to access those documents in the public docket that are available electronically. Once at the website, enter the appropriate Docket ID No. in the ‘‘Search’’ box to view the docket.

Certain types of information will not be placed in the EPA dockets. Information claimed as CBI and other information whose disclosure is restricted by statute, which is not included in the official public docket, will not be available for public viewing in EPA's electronic public docket. EPA policy is that copyrighted material will not be placed in EPA's electronic public docket but will be available only in printed, paper form in the official public docket. Although not all docket materials may be available electronically, you may still access any of the publicly available docket materials through the docket facility identified in this section.

C. Tips for Preparing Your Comments

Please follow these guidelines as you prepare your comments so that EPA can better address them in a timely manner.

1. Identify the permit by docket number and other identifying information (subject heading, Federal Register date, and page number).
2. Explain why you agree or disagree with any proposed provisions; suggest alternatives and substitute language for your requested changes.
3. Describe any assumptions, and provide any technical information and/or data that you used.

4. If you estimate potential costs or burdens, explain how you arrived at your estimate in sufficient detail to allow for it to be reproduced.

5. Provide specific examples to illustrate your concerns, and suggest alternatives.

6. Explain your views as clearly as possible.

7. Make sure to submit your comments by the comment period deadline. EPA is not obligated to accept or consider late comments.

D. How and to Whom do I Submit Comments?

The opportunity to raise issues and provide information on the general permits is during the public comment period (see 40 CFR 124.13 for more information). You may submit comments electronically, by mail, or through hand delivery/courier. To ensure proper receipt by EPA, identify the appropriate docket identification number in the subject line on the first page of your comment. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency would prefer that commenters cite, where possible, the paragraph(s) or section in the fact sheet or part of the permit to which each comment refers. Please ensure that your comments are submitted within the specified comment period. Comments received after the close of the comment period will be marked "late." EPA is not required to consider these late comments (see, however, Section 3.15 of the fact sheet, where EPA expresses an intent to consider late comments with specific, narrow issue).

For additional information about EPA's public docket, visit the EPA Docket Center homepage at http://www.epa.gov/epahome/dockets.htm. Publicly available docket materials are available either electronically in www.regulations.gov or in hard copy at the Water Docket in the EPA Docket Center, EPA West, Room 3334, 1301 Constitution Ave., NW, Washington, DC. A

reasonable fee may be charged for copying. The Public Reading Room is open from 8:30 a.m. to 4:30 p.m., Monday through Friday, excluding legal holidays. The telephone number for the Water Docket is (202) 566-1744.

Comments may be submitted to EPA in the following ways:

EPA Dockets. Use of EPA's electronic public docket to submit comments to EPA electronically is EPA's preferred method for receiving comments. Go directly to www.regulations.gov and follow the online instructions for submitting comments. Once in the system, select "search" and then Docket ID No. **EPA–HQ–OW– 2011–0141** for the VGP and Docket ID No. **EPA–HQ–OW– 2011–0150** for the sVGP. The system is an "anonymous access" system, which means EPA will not know your identity, e-mail address, or other contact information unless you provide it in the body of your comment.

E-mail. Comments may be sent by electronic mail (e-mail) to ow-docket@epa.gov, Attention: Docket ID No. **EPA–HQ–OW– 2011–0141** for the VGP and Docket ID No. **EPA–HQ–OW– 2011–0150** for the sVGP. In contrast to EPA's electronic public docket, EPA's e-mail system is not an "anonymous access" system. If you send an email comment directly to the Docket without going through EPA's electronic public docket, EPA's e-mail system automatically captures your e-mail address. E-mail addresses that are automatically captured by EPA's e-mail system are included as part of the comment that is placed in the official public docket, and made available in EPA's electronic public docket.

Disk or CD-ROM. You may submit comments on a disk or CD-ROM that you mail to the

mailing address identified below. These electronic submissions will be accepted in Microsoft Word or ASCII file format. If EPA cannot read your comment due to technical difficulties and cannot contact you for clarification, EPA may not be able to consider your comment. Avoid the use of special characters and any form of encryption.

By Mail. Send the original and three copies of your comments to: Water Docket, Environmental Protection Agency, Mailcode: 4101T, 1200 Pennsylvania Ave., NW., Washington, DC, 20460, Attention: Docket ID No. EPA-HQ-OW-2011-0150.

By Hand Delivery or Courier. Deliver your comments to: Public Reading Room, Room B102, EPA West Building, 1301 Constitution Avenue NW, Washington, DC 20004, Attention Docket ID No. **EPA–HQ–OW– 2011–0141** for the VGP and Docket ID No. **EPA–HQ–OW– 2011–0150** for the sVGP. Such deliveries are only accepted during the Docket's normal hours of operation. Special arrangements should be made for deliveries of boxed information.

E. Public Hearing

Because EPA anticipates a significant degree of public interest in the draft VGP and the draft sVGP, EPA will hold a public hearing on Wednesday January 11, 2012 to receive public comment and answer questions concerning the draft VGP and draft sVGP, and will present the proposed requirements of the draft VGP and the draft sVGP and the basis for those requirements. The hearing will be held at EPA East Room 1153, 1201 Constitution Ave NW, Washington DC 20460, from 9:00 a.m. to 5:00 p.m. (EST) or until all comments have been heard. Any person may provide written or oral statements and data pertaining to the draft permits at the public

hearing. Depending on the number of people who desire to make an oral statement, EPA may impose limits on the time allowed for oral statements, which may result in the full statement not being heard. Therefore, EPA recommends that all those planning to present oral statements also submit written statements. Any person not making an oral statement may also submit a written statement. Please note that the public hearing may close early if all business is finished.

F. Public Meeting

The focus of the public meeting is to present the proposed requirements of the draft VGP and draft sVGP and the basis for those requirements, as well as to answer questions concerning the draft permits. At this meeting, any person may provide written or oral statements and data pertaining to the draft permits. The date, time, and location of the public meeting is as follows:

Monday January 23, 2012, 10 a.m. to 5 p.m. CST or until all comments have been heard, Ralph H. Metcalfe Federal Building, Room 331, 77 West Jackson Blvd, Chicago IL 60604.

Depending on public interest, EPA may host at least one additional public meeting. Please see EPA's webpage at www.epa.gov/npdes/vessels, which will announce any additional public meetings. EPA will announce the public meeting on its webpage at least four weeks before it is scheduled to occur.

EPA encourages interested and potentially affected stakeholders to attend one of the scheduled public meetings or hearings and provide oral or written comments. These meetings are open to the public. Please note that the public meeting may end early if all business is finished. Oral or written comments received at the public meeting will be entered into the

Docket. If you are unable to attend, you may submit comments to the EPA Water Docket at the address listed under Section D.

G. Webcast

EPA is scheduling a webcast to provide information on the draft permits and to answer questions for interested parties that are unable to attend the public meetings or public hearing. For information on the time, how to register, and how to attend the webcast, see EPA's website at http://www.epa.gov/npdes/vessels. EPA plans to schedule this webcast in the latter half of January and will announce it on its Web page at least four weeks before it is scheduled to occur. EPA also plans to make a recording of this webcast available on its webpage for future playback.

H. Finalizing the Permits

After the close of public comment period, EPA will issue final permit decisions. These decisions will not be made until after all public comments have been considered and appropriate changes are made to the permits, fact sheet, and other supporting documents. EPA's response to comments received will be included in the docket as part of the final permit decisions. EPA plans to take final action on the draft VGP and sVGP by November 30, 2012. Note that EPA plans to take final action on the permit a year prior to expiration of the current VGP. EPA

believes this approach makes sense, as it will give the regulated community substantial time to prepare for the application of new requirements.

I. Who are the EPA Regional Contacts for these Draft Permits?

For EPA Region 1, contact John Nagle at US EPA, Region 1, New England / Office of Ecosystem Protection, 5 Post Office Square, Suite 100, Mail Code: OEP 06-1, Boston, MA 02109-3912; or at tel.: (617) 918-1054; or e-mail at nagle.john@epa.gov.

For EPA Region 2, contact Sara Sorenson at US EPA, Region 2, 290 Broadway, 24th Floor, New York, NY 10007-1866; or at tel.: (212) 637-3877; or e-mail at sorenson.sara@epa.gov.

For EPA Region 3, contact Mark Smith at US EPA, Region 3, 1650 Arch St., Mail Code: 3WP41, Philadelphia, PA 19103-2029, or at tel.: (215) 814-3105; or e-mail at smith.mark@epa.gov.

For EPA Region 4, contact Marshall Hyatt at US EPA, Region 4 / Water Permits Division, Atlanta Federal Center, 61 Forsyth St. SW, Atlanta, GA 30303-3104; or at tel.: (404) 562-9304; or e-mail at hyatt.marshall@2epa.gov.

For EPA Region 5, contact Sean Ramach at US EPA, Region 5, 77 W Jackson Blvd., Mail Code: WN16J, Chicago, IL 60604-3507; or at tel.: (312) 886-5284; or e-mail at ramach.sean@epa.gov.

For EPA Region 6, contact Josh Waldmeier at U.S. EPA, Region 6, 1445 Ross Ave., Suite 1200, Dallas, TX 75202-2733; or at tel.: (214) 665-8064; or e-mail at waldmeier.joshua@epa.gov.

For EPA Region 7, contact Alex Owutaka at US EPA, Region 7, 901 N 5th St., Kansas City, KS 66101; or at tel.: (913) 551-7584; or e-mail at owutaka.alex@epa.gov.

For EPA Region 8, contact Lisa Luebke at US EPA, Region 8, 1595 Wynkoop St., Mail Code: 8P-W-WW, Denver, CO 80202; or at tel.: (303) 312-6256; or e-mail at luebke.lisa@epa.gov.

For EPA Region 9, contact Eugene Bromley at US EPA, Region 9, 75 Hawthorne St., San Francisco, CA 94105-3901; or at tel.: (415) 972-3510; or e-mail at bromley.eugene@epa.gov.

For EPA Region 10, contact Cindi Godsey at US EPA, Region 10, 222 W 7th Ave., Box 19, Anchorage, AK 99513; or at tel.: (907) 271-6561; or e-mail at godsey.cindi@epa.gov.

II. Background Information

A. Statutory and Regulatory History

The Clean Water Act (CWA) section 301(a) provides that "the discharge of any pollutant by any person shall be unlawful" unless the discharge is in compliance with certain other sections of the Act. 33 USC 1311(a). The CWA defines "discharge of a pollutant" as "(A) any addition of any pollutant to navigable waters from any point source, (B) any addition of any pollutant to the waters of the contiguous zone or the ocean from any point source other than a vessel or other

floating craft." 33 USC 1362(12). A "point source" is a "discernible, confined and discrete conveyance" and includes a "vessel or other floating craft." 33 USC 1362(14).

The term "pollutant" includes, among other things, "garbage… chemical wastes …and industrial, municipal, and agricultural waste discharged into water." The Act's definition of "pollutant" specifically excludes "sewage from vessels or a discharge incidental to the normal operation of a vessel of the Armed Forces" within the meaning of CWA section 312. 33 USC 1362(6).

One way a person may discharge a pollutant without violating the CWA section 301 prohibition is by obtaining authorization to discharge (referred to herein as "coverage") under a CWA section 402 National Pollutant Discharge Elimination System (NPDES) permit (33 USC section 1342). Under CWA section 402(a), EPA may "issue a permit for the discharge of any pollutant, or combination of pollutants, notwithstanding section 1311(a)" upon certain conditions required by the Act.

EPA issued the original Vessel General Permit in response to a District Court ruling which vacated a longstanding regulatory exemption for discharges incidental to the normal operation of vessels at 40 CFR 122.3(a). *Northwest Envtl. Advocates et al. v. United States EPA*, 2006 U.S. Dist. LEXIS 69476 (N.D. Cal. 2006). EPA developed the VGP to regulate incidental discharges from vessels operating in a capacity as a means of transportation. That permit was issued on December 18, 2008, with an effective date of December 19, 2008. 73 Fed. Reg. 79,473 (Dec. 29, 2008). Subsequently, the U.S. District Court for the Northern District of California issued an order providing that "the exemption for discharges incidental to the normal operation of a vessel, contained in 40 CFR 122.3(a), is vacated as of February 6, 2009." *Northwest Environmental*

Advocates et al. v. *United States EPA,* No. C 03–05760–SI (December 17, 2008). Therefore, the date when the regulated community was required to comply with the VGP was February 6, 2009.

In 2010, Congress enacted P.L. 111-215 which extended the moratorium (P.L. 110-299) prohibiting NPDES permitting for discharges incidental to the normal operation of commercial fishing vessels (regardless of size) and those other non-recreational vessels less than 79 feet in length until December 2013. That moratorium does not include ballast water discharges. That moratorium also does not apply to other incidental discharges, which on case-by-case basis, EPA or the State, as appropriate, determines contribute to a violation of water quality standards or pose an unacceptable risk to human health or the environment. The original legislation called for a two-year moratorium on permitting until July 31, 2010, during which time EPA was to study the relevant discharges and submit a report to Congress. EPA finalized this Report to Congress, entitled "Study of Discharges Incidental to Normal Operation of Commercial Fishing Vessels and Other Non-Recreational Vessels Less Than 79 Feet" in August 2010, and it can be viewed at: http://cfpub.epa.gov/npdes/vessels/background.cfm.

B. The 2008 VGP

The 2008 VGP addresses 26 potential vessel discharge streams by establishing effluent limits, including Best Management Practices (BMPs), to control the discharges of waste streams and constituents found in those waste streams. For these discharges, the permit establishes effluent limits pertaining to the constituents found in the effluent and BMPs designed to decrease the amount of constituents entering the waste stream. A vessel might not produce all of these discharges, but a vessel owner or operator is responsible for meeting the applicable effluent

limits and complying with all the effluent limits for every listed discharge that the vessel produces.

To obtain authorization, the owner or operator of a vessel that is either 300 or more gross registered tons or has the capacity to hold or discharge more than 8 cubic meters (2113 gallons) of ballast water is required to submit a Notice of Intent (NOI) to receive permit coverage, beginning six months after the permit's issuance date, but no later than nine months after the permit's issuance date. Owners or operators of vessels that meet the applicable eligibility requirements for permit coverage but are not required to submit an NOI, including vessels less than 300 gross registered tons with no more than 8 cubic meters of ballast water capacity are automatically authorized by the permit to discharge according to the permit requirements.

The VGP requires owners or operators of vessels to conduct routine self-inspections and monitoring of all areas of the vessel that the permit addresses. The routine self-inspections are required to be documented in the ship's logbook. Analytical monitoring of certain discharges is required for certain types of vessels. The VGP also requires owners or operators of vessels to conduct comprehensive annual vessel inspections, to ensure even the hard-to-reach areas of the vessel are inspected for permit compliance. If the vessel is placed in dry dock while covered under the permit, a dry dock inspection and report is required to be completed. Additional monitoring requirements are imposed on owners or operators of certain classes of vessels, based on their unique characteristics.

For additional information on the VGP, please go to www.epa.gov/npdes or see Docket ID. No. EPA-HQ-OW-2008-0055 at www.regulations.gov.

C. National Research Council and Science Advisory Board Ballast Water Studies

As part of its strategy for improving the Agency's understanding of ballast water discharges, EPA, in partnership with the United States Coast Guard, commissioned two ballast water studies from highly respected, independent scientific entities. EPA commissioned these studies in order to produce the best possible scientific compendium of ballast water information relevant to the development of today's VGP. EPA commissioned these studies believing that they would help inform the Agency's decisions about what effluent limits to set for ballast water discharges.

The first study was led by the National Research Council (which functions under the auspices of the National Academy of Sciences (NAS), the National Academy of Engineering, and the Institute of Medicine) and addressed how to assess risk to water quality associated with ballast water discharges (NAS, 2011). EPA designed this study to inform the Agency's development of water quality-based effluent limits for ballast water and related provisions for today's draft VGP. The NAS panel consisted of nine experts with extensive knowledge of issues surrounding invasive species. That panel found that they could not evaluate the risk associated with a variety of regulatory discharge limits because of "a profound lack of data and information to develop and validate models" and "it was not possible with any certainty to determine the risk of nonindigenous species establishment under existing discharge limits" (NAS 2011, pp. 3). The NAS report noted that setting a concentration based, ballast water discharge standard that is consistent with the International Maritime Organization (IMO) D-2 standard (the standard expressed in the 2004 International Convention for the Control and Management of Ships Ballast Water and Sediments) is "clearly a first step forward" (103), and that it "represents a significant reduction in concentrations beyond ballast water exchange" (98). Furthermore, the report stated that the IMO D-2 standard "now provides a manageable baseline for developing scientific models that can be used to quantitatively determine ballast water discharge standards" (101). Of

further note, the report proposed a coordinated, large scale research program, consisting of two major parts: the first involving "[a] well-designed ship discharge sampling program to measure propagule supply" and the second involving an experimental, mesocosm based approach to calibrate models which should yield results in "a three to five year time horizon" (111). The NAS panel estimated that different elements of this research program would take between 3-10 years to complete. For a copy of the NAS report, please go to: http://www.nap.edu/catalog.php?record_id=13184.

The second study was led by EPA's autonomous Science Advisory Board (SAB) and evaluated the status of ballast water treatment technologies. EPA designed the SAB study to inform EPA's understanding of appropriate technology-based limits for ballast water provisions for today's draft VGP. The SAB panel was made up of 22 scientists and engineers, a significant number of which are recognized as experts in evaluating ballast water treatment systems. The SAB found, among other things, that at least five types of ballast water treatments systems are available which treat to the limits found in the International Maritime Organization (IMO) Ballast Water Convention and proposed in today's permit. For a copy of the SAB report, please see: http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/BW%20discharge!OpenDocument&TableRow=2.3#2

III. Summary of Today's Permits

A. Summary of Significant Proposed Changes to the 2008 VGP

For purposes of highlighting significant proposed changes to the 2008 VGP, EPA is organizing this discussion into 3 sections: changes to ballast water requirements; changes to other incidental discharge effluent requirements; and changes to administrative requirements.

1. Ballast Water. In today's draft permit, EPA is proposing new, more stringent numeric technology-based effluent limitations that are applicable to vessels with ballast water tanks and will largely replace the non-numeric effluent limitations for ballast water in the 2008 VGP. These limitations will achieve significant reductions in the number of living organisms discharged via ballast water into waters subject to this permit. Ballast water discharges are widely recognized as one of the primary sources (or vectors) for the spread of aquatic invasive species, also known as aquatic nuisance species (ANS). When species in ballast tanks are transported between waterbodies and discharged, they have potential for establishing new, non-indigenous populations that can cause severe economic and ecological impacts. EPA has expressed the numeric effluent limit for ballast water discharges as numbers of living organisms per cubic meter (i.e. as a maximum acceptable concentration) because reducing the concentration of living organisms will reduce inoculum densities of potential invasive species discharged in a vessel's ballast water, i.e., thereby reducing the risk posed by the discharge. EPA has proposed a staggered implementation schedule for certain existing vessels for achieving the numeric limitation by the first drydocking after January 1, 2014 or January 1, 2016 (depending upon vessel size), which may extend beyond the permit term for some vessels. Vessels newly constructed after January 1, 2012 that are subject to the numeric limitation must meet those limits upon entering U.S. waters upon the effective date of the permit. EPA notes that this time schedule is consistent with the timelines in the standards set forth in regulation D-2 of the International Ballast Water Convention established by the IMO. Also as part of today's draft

permit, EPA has proposed maximum discharge limitations for certain biocides and residuals to limit the impact of these pollutants to waters subject to this permit. The draft permit would also allow for most vessels which meet the treatment requirements to no longer perform ballast water exchange.

Under the draft VGP, vessel owner/operators subject to the concentration-based numeric discharge limitations would be able to meet their obligations in one of four ways: discharge ballast water meeting the applicable numeric limits of the VGP; transfer the ship's ballast water to a third party treatment at an NPDES permitted facility; use treated municipal/potable water as ballast water; or not discharge ballast water. As in the 2008 VGP, vessels enrolled in, and meeting the requirements of the US Coast Guard's Shipboard Technology Evaluation Program (STEP) would be deemed to be in compliance with the numeric limitations.

In today's draft permit, the numeric concentration-based treatment limits for ballast water discharges would not apply to some vessels. Special requirements would apply to the following vessel classes: vessels operating exclusively within a limited area on short voyages; unmanned, unpowered barges; and existing bulk carrier vessels (commonly known as "Lakers") built before January 1, 2009 that operate exclusively in the Great Lakes upstream of the Welland Canal (referred to as existing "confined Lakers"). See discussion below regarding specific draft requirements for Lakers.

Due to the challenges of installing ballast water treatment systems currently available on the existing confined Lakers, and the lack of currently available ballast water treatment systems appropriate for these vessels, alternative technologies are being researched. If these issues can be appropriately addressed, e.g., if an active substance and disinfection regime is identified, such technology might be a potentially useful treatment technology for the confined Lakers. EPA is

specifically seeking comment as to whether the numeric ballast water treatment limits should be applicable to existing confined Lakers. All confined Lakers built after January 1, 2009, however, would be required to meet ballast water treatment numeric technology-based effluent limits found in the VGP.

EPA has determined that Best Available Technology Economically Achievable (BAT) over time will be a function of a vessel's construction date, size, and class. For certain existing vessels, EPA has proposed a staggered implementation schedule that requires the vessel to meet the numeric effluent limitations by the first drydocking after January 1, 2014 or January 1, 2016 depending on vessel size, which may extend beyond the permit term for certain vessels.

The draft VGP would impose several best management practices (BMPs) for vessels until they are required to meet the numeric ballast water limits that EPA has found to be available, practicable and economically achievable. These interim requirements are substantially similar to those in the 2008 VGP.

One of the interim management measures is that all vessels that are equipped to carry ballast water and enter the Great Lakes via the Saint Lawrence Seaway System must conduct saltwater flushing of ballast water tanks 200 nautical miles from any shore before entering either the U.S. or Canadian waters of the Seaway System. Additionally, vessels entering the Great Lakes utilizing a ballast water treatment system would also be required to conduct ballast water exchange or saltwater flushing (as applicable) in addition to meeting the numeric limits for ballast water once they apply if they meet the following requirements: (1) the vessel operates outside the Exclusive Economic Zone (EEZ) and more than 200 nm from any shore and then enters the Great Lakes, and (2) the vessel has taken on ballast water that has a salinity of less than 18 ppt from a coastal, estuarine, or freshwater ecosystem within the previous month. If a

vessel affected by these draft conditions has not taken on ballast water with a salinity of less than 18 ppt in the previous month, the master of the vessel would be required to certify to this effect as part of the ballast water recordkeeping requirements before entering the Great Lakes.

EPA has included in today's draft VGP three management measures specific to existing confined Lakers. EPA believes these requirements are economically practicable and achievable, and represent common sense approaches to managing ballast water discharges for vessels when they have not installed ballast water treatment systems. If existing confined Lakers are retrofitted to meet the numeric effluent limits in the draft VGP, these vessels would no longer be required to perform these management measures.

As in the 2008 VGP, EPA has included certain mandatory requirements for all vessels. These requirements are consistent with EPA's Science Advisory Board's recommendations to reduce risks at multiple points in the ballast's operations (See EPA SAB 2011, available at http://yosemite.epa.gov/sab/sabproduct.nsf/fedrgstr_activites/6FFF1BFB6F4E09FD852578CB006E0149/$File/EPA-SAB-11-009-unsigned.pdf). Some of the mandatory requirements for all vessels equipped with ballast water tanks that operate in waters of the U.S. would be to: avoid the discharge of ballast water into waters subject to this permit that are within or that may directly affect marine sanctuaries, marine preserves, marine parks, shellfish beds, or coral reefs; minimize or avoid uptake of ballast water in the listed areas and situations; clean ballast tanks regularly to remove sediments in mid-ocean or under controlled arrangements in port, or at dry dock; when the vessel is equipped with high and low suction, utilize the high suction for ballast tank discharge to minimize the discharge of entrained sediment; and minimize the discharge of ballast water essential for vessel operations while in the waters subject to this permit. EPA

estimated the cost and burden of the ballast water requirements in its economic analysis for the permit.

2. Non-Ballast Water. Today's proposed VGP would impose more stringent technology-based effluent limits in the form of Best Management Practices for discharges of oil to sea interfaces. The draft VGP would require that all powered new build vessels (those constructed after December 19, 2013) must use "environmentally acceptable lubricants" in their oil-to-sea interfaces. Additionally, the draft VGP would authorize the discharge of fish hold effluent and establish appropriate Best Management Practices for this discharge type. EPA has also included numeric limits for exhaust gas scrubber effluent that are consistent with those established by International Maritime Organization guidelines for this discharge type. EPA is also specifically seeking input as to whether to include more stringent numeric limits for bilgewater for certain vessels, which would decrease the amount of oil (and potentially other pollutants) discharged into U.S. waters.

The proposed VGP contains monitoring requirements for certain larger vessels for ballast water, graywater, and exhaust gas scrubber effluent if they discharge into waters subject to the permit. EPA has included this monitoring requirement to assure treatment systems are performing as required (when applicable) and to generate additional information for EPA's future analyses. EPA estimated the cost and burden of these requirements in its economic analysis for the permit.

3. Administrative Improvements. EPA has made several efficiency improvements in the draft permit, including clarifying that electronic recordkeeping is allowed under the permit, eliminating duplicative reporting, and allowing consolidated reporting for certain vessels.

Under this draft VGP, permittees not required to submit a NOI would be required to complete and keep a Permit Authorization and Record of Inspection (PARI) Form onboard their vessel at all times. EPA is proposing the PARI form requirement because the Agency believes it is an efficient way for the owner/operator to certify that they have read and agreed to comply with the terms of the permit, and demonstrate basic understanding of the permit's terms and conditions. In addition, the form will provide EPA (or its authorized representative) with a standardized foundation for conducting inspections.

Under the draft VGP, EPA would consolidate the one-time report and annual noncompliance report into one annual report. As discussed in the fact sheet for today's permit, EPA found that the 2008 VGP reporting requirements resulted in confusion among some permittees. EPA believes that having a single annual report that permittees must file, which can include all of the permittee's analytical monitoring results (as applicable) for the previous year, would reduce this confusion and result in better information for the Agency. Additionally, the draft VGP would authorize a combined annual report for unmanned, unpowered barges if they meet specified criteria to maximize efficiency and reduce burden on a significant portion of the regulated universe. EPA believes that many of these barges are fundamentally similar and have a limited number of discharges. Furthermore, vessel owner/operators may have several thousand barges with these similar characteristics. Hence, EPA identified this provision as an efficient way to gather information by the agency without sacrificing data quality.

EPA is specifically seeking comment on the administrative improvements in today's draft VGP, and soliciting suggestions for other efficiency improvements.

B. Summary of the Draft sVGP

EPA is today proposing the Small Vessel General Permit (sVGP) for vessels less than 79 feet and all commercial fishing vessels. EPA is proposing the sVGP to provide coverage for vessels less than 79 feet in length because the P.L. 110-299 moratorium (subsequently extended by P.L. 111-215) expires on December 18, 2013. EPA recognizes that small commercial vessels are different in operation than larger commercial vessels, they generally have fewer discharge types, and that owner/operators of smaller vessels have particularized expertise and different resources available to manage their vessels than owner/operators of larger vessels; hence, the draft sVGP is structured differently for this class of permittees.

The draft sVGP would not require the vessel owner or operator to submit an NOI to receive permit coverage. However, as with vessels not required to submit an NOI under the VGP, sVGP permittees would be required to complete and keep a Permit Authorization and Record of Inspection (PARI) form onboard their vessel at all times. EPA also notes that vessel owner/operators of vessels less than 79 feet that have less than 8 cubic meters of ballast water may choose whether they wish to seek coverage under the sVGP or the VGP. The PARI form would document under which permit the owner/operator has sought coverage.

The discharges covered in the draft sVGP are categorized into several broad categories listed in the permit. The management categories regulated under the draft sVGP are divided into general requirements, fuel management, engine and oil control, solid and liquid waste

management, deck washdown and runoff and above water line hull cleaning, vessel hull maintenance, graywater management, fish hold effluent management, and ballast water management. Additionally, vessel owner/operators would be required to comply with practices to reduce pollutant concentrations in their discharges.

The draft sVGP includes non-numeric effluent limits in the form of Best Management Practices (BMPs), which were developed for these discharges because EPA has determined that it is infeasible to calculate numeric effluent limits at this time. The BMPs are designed to minimize the amount of any discharge produced as well as reduce the likelihood the discharge would enter a waterbody. In addition to required BMPs, the permit includes a section of encouraged BMPs. EPA believes that for most small vessel discharges, minimization of pollutants in those discharges can be achieved without using highly engineered, complex treatment systems.

C. Draft Permit Provisions on which EPA is Specifically Soliciting Comment

While EPA encourages the public to review and comment on all aspects and provisions of the draft permits, EPA has included in the body of the draft VGP and sVGP several specific requests for comment on draft conditions. Note that in many places in this notice and the fact sheet for the draft permit, EPA requests comments on specific aspects of today's draft permit; these specific solicitations are meant to highlight for commenters areas on which they may wish to focus, most often because they involve provisions not contained in the 2008 VGP. They should not be interpreted as discouraging comment on other provisions of the draft permit. The following list summarizes many of these conditions and the nature of the Agency's specific request for comment, and indicates where they are included in the proposed permit:

1. A four year permit term for the VGP, specifically, what are the merits of a four year permit term instead of the standard five year permit term? See Section 2.4 of the VGP fact sheet.
2. The approach of not requiring vessels that are smaller than 300 gross tons, and do not have the capacity to carry more than 8 cubic meters (2113 gallons) of ballast water to submit an NOI. See Part 1.5.1.1 of the VGP and Section 3.7.1 of the VGP fact sheet.
3. The requirement that vessel owner/operators that are not required to submit NOIs must complete, sign and maintain onboard the VGP PARI Form contained in Appendix K of the permit. See Part 1.5.1.2 of the VGP and Section 3.7.2.2 of the VGP fact sheet.
4. The inclusion of revised language in the proposed VGP regarding what may constitute new information with respect to ballast water discharges for the purposes of potentially modifying the permit during its term (the "reopener" provision). See Part 1.9.1 of the VGP and Section 3.11 of the VGP fact sheet.
5. Whether the controls in this permit represent the BPT, BCT and BAT levels of control. If commenters believe that the proposed controls do not, or that other controls would better represent the BPT, BCT or BAT levels of control, explicitly provide data and information about the applicability of such controls to all types of commercial vessels in all weather/operating situations, and the costs and non-water quality environmental impacts, including energy impacts, of such options. See Part 2.1 of the VGP and Section 4.2. of the VGP fact sheet.
6. The requirement that vessel owner/operators must outline their training plans in their recordkeeping documentation to show they have made good faith efforts to assure their crews can adequately maintain and use pollution prevention equipment and otherwise meet the terms of this permit. See Part 4.2 of the VGP and Section 4.3.1.6 of the VGP fact sheet.

7. Whether to include more stringent bilgewater requirements for new build vessels and whether to provide existing vessels with additional bilgewater management options in the final VGP. See Part 2.2.2 of the VGP and Section 4.4.2.2 of the VGP fact sheet.
8. Whether ballast water management plans should be made available to the public, considering any benefits that might accrue from making the plans available to the public and any increases in administrative burdens on both permittees and the Agency that might result from such a requirement. See Part 2.2.3.2 of the VGP and Section 4.4.3.2 of the VGP fact sheet.
9. Whether additional management measures which reduce risks at various stages of ballasting are appropriate to include in the final VGP. Specifically, what additional management measures the VGP should include, costs associated with those measures, and how well those measures reduce the risk from ballast water discharges. Also, any additional measures discussed by the NAS (2011) or SAB (2011) reports that EPA should consider incorporating in this permit. Please submit any data or other information supporting your recommendations. See Part 2.2.3.3 of the VGP and Section 4.4.3.3 of the VGP fact sheet.
10. The appropriateness of the biocide discharge limits, in particular, whether the limit for peracetic acid is adequately protective of coldwater environments. See Part 2.2.3.5.1.1.5.1 of the VGP and Section 4.4.3.5.1.1.4 of the VGP fact sheet.
11. The approach of requiring owner/operators of ballast water treatment systems which use a biocide or biocide derivative that is not specifically authorized by the VGP to notify EPA at least 120 days in advance of its use, and the option of conducting whole effluent toxicity testing for those biocides or biocide derivatives that are not specifically authorized in the VGP in lieu of notification. See Part 2.2.3.5.1.1.5.1 of the VGP and Section 4.4.3.5.1.1.6 of the VGP fact sheet.

12. Whether the use of potable water generated by shipboard treatment systems on vessels which use small quantities of ballast water, for example utilizing potable water ballast to offset fuel consumption on research vessels, is an appropriate approach to meeting the numeric technology-based effluent limits of the 2013 VGP. See Part 2.2.3.5.1.3 of the VGP and Section 4.4.3.5.3 of the VGP fact sheet.
13. New definition of "short distance voyage." Are these the appropriate definitions of such a voyage? Are these definitions workable for vessel operators? Are there alternative suggestions? For instance, is there an existing approach to defining geographic boundaries based upon ecological criteria which would be appropriate? If so, why are these appropriate? Please provide any supporting data and rationale with your comments. See Part 2.2.3.5.3.1 of the VGP and Section 4.4.3.5.6.1 of the VGP fact sheet.
14. Whether unmanned, unpowered barges have technologies available to meet numeric ballast water treatment limits. Also, any information about how these vessels utilize ballast water, and whether the Agency's understanding of their ballasting patterns is correct. See Part 2.2.3.5.3.2 of the VGP and Section 4.4.3.5.6.2 of the VGP fact sheet.
15. Whether "existing confined Lakers" built before January 1, 2009 that operate exclusively in the Great Lakes upstream of the Welland Canal should be required to use a ballast water treatment system to meet the ballast water discharge standards found in this permit under the implementation schedule. The applicability and availability of ballast water treatment systems for existing confined Lakers built before January 1, 2009. Given the constraints noted by the SAB, can the confined Lakers implement the technologies evaluated by the SAB? Are there unique technologies that are available or that would potentially be available during the permit term for the confined Lakers? Are there other treatment technologies

and/or methods that can be implemented by confined Lakers that can reliably treat ballast water to reduce the concentration of living organisms upon discharge? Please provide appropriate supporting documentation, including applicable data and sources for your information. See Part 2.2.3.4 and 2.2.3.5.3.3 of the VGP and Section 4.4.3.5.6.3 of the VGP fact sheet.

16. The appropriateness of the technology-based ballast water controls proposed in this VGP, and whether there are data sources which indicate that certain ballast water treatment systems reliably exceed the limits established in this permit. Whether the numeric discharge limits can be applied to those vessel classes to which, under the proposed VGP, such limits would not apply. See Part 2.2.3.5 and 2.2.3.5.3 of the VGP and Sections 4.4.3.5.6 and 4.4.3.5.7 of the VGP fact sheet.

17. The appropriateness of including alternative treatment limits used by other regulatory agencies, specifically limits promulgated by the State of California and whether the numeric limits for ballast water discharges from the Performance Standards for the Discharge of Ballast Water For Vessels Operating in California Waters, California Code of Regulations Title 2, Division 3, Chapter 1, Article 4.7 sections 2293-2294 as codified as of March 4, 2011, should be included in the final VGP. As discussed in VGP fact sheet in Section 4.4.3.5.8, those limits are:

    (a) No detectable living organisms that are greater than 50 micrometers in minimum dimension;

    (b) Less than 0.01 living organisms per milliliter that are less than 50 micrometers in minimum dimension and more than 10 micrometers in minimum dimension;

    (c) For living organisms that are less than 10 micrometers in minimum dimension:

(1) less than 1,000 bacteria per 100 milliliter;

(2) less than 10,000 viruses per 100 milliliter;

(3) concentrations of microbes that are less than:

(A) 126 colony forming units per 100 milliliters of *Escherichia coli*;

(B) 33 colony forming units per 100 milliliters of Intestinal enterococci; and

(C) 1 colony forming unit per 100 milliliters or 1 colony forming unit per gram of wet weight of zoological samples of Toxicogenic *Vibrio cholerae* (serotypes O1 and O139).

See Section 4.4.3.5.7 of the VGP fact sheet.

18. The requirement for vessels entering the Great Lakes from freshwater and brackish ecosystems to conduct ballast water exchange or saltwater flushing in addition to treatment with a ballast water treatment system. Also, whether BWE should be required for all vessels entering the Great Lakes that are subject to the numeric TBEL, regardless of origin, whether this requirement should be considered for other freshwater destinations in US waters, and/or whether this requirement should be considered for other destinations in U.S. waters, regardless of whether those vessels took on ballast water from saltwater or freshwater ports. See Part 2.2.3.7 of the VGP and Section 4.4.3.9.4.2 of the VGP fact sheet.
19. EPA's determination, including the detailed explanation, that water quality-based effluent limits for ballast water discharges are infeasible to calculate at this time. See Section 4.4.3.9.4.1 of the VGP fact sheet.

20. Inclusion of factors associated with electronic recordkeeping to ensure that records created and/or maintained in such systems are readable and legally dependable with no less evidentiary value than their paper equivalent and the implementation guidance provided in the fact sheet. See Part 4.2.1 of the VGP and Section 6.3.1 of the VGP fact sheet.
21. The authorization to combine the annual report for unmanned, unpowered barges because many of these vessels are fundamentally similar and have a limited number of discharges. Specifically, EPA is seeking comment on whether there are any other categories of vessels for which owner/operators should be allowed to submit a combined annual report instead of the annual report for each of their vessels. Please submit specific information as to why such an approach is appropriate for certain vessel types. See Part 4.4.2 and Section 6.4.2 of the VGP fact sheet.
22. Several new definitions, including "biodegradable," "environmental acceptable lubricants," and "voyage." See Appendix A of the VGP and Section 9 of the VGP fact sheet.
23. The approach that allows vessels which have 8 or more cubic meters of ballast water capacity, but which do not discharge ballast water, to maintain coverage under the sVGP. Additionally, EPA is seeking comment on whether larger or smaller volumes of ballast water discharge should be regulated under the sVGP and whether additional best management practices should be required for these small volumes of ballast water from sVGP vessels. Please submit any supporting information, data sources, and rationale. See Part 2.9 of the sVGP and Section 4.9 of the sVGP fact sheet.
24. Definition section as a whole in the sVGP and the specific definitions contained therein. See Part 6 of the sVGP and Section 8 of the sVGP fact sheet.

D. Analysis of Economic Impacts of the draft VGP and the draft sVGP

EPA performed an economic analysis for both the draft VGP and draft sVGP to evaluate the incremental costs of requirements in each permit. Both of these analyses are available in the docket for today's permits. A summary of each follows.

1. Analysis of draft VGP costs. EPA estimates that approximately 60,000 domestic flag and 12,400 foreign flag vessels would be covered under the draft VGP, but only a subset of these vessels would incur incremental costs as a result of the revised VGP requirements. To estimate the effect of revised permit requirements on an industry as a whole, EPA's VGP analysis takes into account previous conditions and determines how the industry would act in the future in the absence of revised Permit requirements. The baseline for this analysis is full industry compliance with existing federal and state regulations, including the 2008 VGP in the case of vessels currently covered by the permit; and current industry practices or standards that exceed current regulations to the extent that they can be empirically observed. In addition, a number of laws and associated regulations (including the National Invasive Species Act; the Act to Prevent Pollution from Ships; the Comprehensive Environmental Response, Compensation, and Liability Act; the Organotin Anti-fouling Paint Control Act; and others) already cover certain discharges that would be subject to the new permitting regime. The overlap between revised permit requirements and existing regulations and practices is discussed at greater length in the economic analysis.

EPA estimated compliance costs to commercial vessels associated with each of the permit's practices and discharge categories identified and the paperwork burden costs. Incremental costs are understood to result from the inclusion of all commercial fishing vessels 79 feet or larger under the VGP As noted above, the moratorium on coverage for commercial fishing vessels and vessels less than 79 feet expires on December 18. 2013. Commercial fishing vessels 79 feet or larger will be covered by this permit, and most non-recreational vessels less than 79 feet,

including commercial fishing vessels, are expected to be covered by the Small Vessel General Permit.' and from revised, more stringent requirements for certain discharge categories and practices. Changes in compliance costs also result from streamlining selected requirements, which is expected to reduce compliance costs for owners of certain vessels. Overall, EPA finds that revisions in the VGP requirements could result in aggregate annual incremental costs for domestic vessels ranging between $6.5 and $20.9 million (2010). This includes the paperwork burden costs and the sum of all practices for applicable discharge categories for all vessels estimated to be covered by the revised VGP. The ballast water provisions of this permit for domestically flagged vessels are expected to cost between $1.1 and $2.5 million annually (excluding the cost of purchasing and maintaining a ballast water treatment system: see Section 4.4.3 of this fact sheet and part 4.2.3 of the economic and benefits analysis prepared for this permit for additional discussion). The average per vessel cost ranges from $26 to $3,933. There is considerable uncertainty in the assumptions used for several practices and discharge categories and these estimates therefore provide illustrative ranges of the costs potentially associated with the 2013 rather than incremental costs incurred by any given vessel owner.

To evaluate economic impacts of revised VGP requirements on the water transportation, fishing, and mining industries, EPA performed a firm-level analysis. The firm-level analysis examines the impact of any incremental cost per vessel to comply with the revised VGP requirements on model firms that represent the financial conditions of "typical" businesses in each of the examined industry sectors. More than ninety percent of the firms in the water transportation and fishing industries, and in the drilling oil and gas wells segment of the mining industry, are small, and EPA believes it is unlikely that firm-level impacts would be significant among large firms in this industry. Therefore, a firm-level analysis focuses on assessment of

impacts on small businesses. To evaluate the potential impact of the Vessel General Permit on small entities, EPA used a cost-to-revenue test to evaluate the potential severity of economic impact on vessels and facilities owned by small entities. The test calculates annualized pre-tax compliance cost as a percentage of total revenues and uses a threshold of 1 and 3 percent to identify facilities that would be significantly impacted as a result of this Permit.

EPA applied a cost-to-revenue test which calculates annualized pre-tax compliance cost as a percentage of total revenues and used a threshold of 1 and 3 % to identify entities that would be significantly impacted as a result of this Permit. The total number of entities expected to exceed a 1% cost ratio ranges from 52 under low cost assumptions to 360 under high cost assumptions. Of this universe, the total number of entities expected to exceed a 3 % cost ratio ranges from 0 under low cost assumptions to 11 under high cost assumptions. This is based out of 5,480 total small firms. Accordingly, EPA concludes that this permit will not, if issued result in a significant economic impact on any businesses, and in particular, small businesses.

2. Analysis of draft sVGP costs. EPA estimates that between 115,000 and 138,000 vessels are potentially affected by the draft sVGP requirements. The establishments that own and operate vessels that will be subject to the sVGP are primarily associated with the fishing and water transportation industries, and with the oil and gas sector within the mining industry. To estimate the effect of sVGP requirements on an industry as a whole, EPA's analysis takes into account previous conditions and determines how the industry would act in the future in the absence of Permit requirements. The baseline for this analysis is full industry compliance with existing federal and state regulations and with current industry practices or standards that exceed current regulations to the extent that they can be empirically observed. EPA estimated potential compliance costs to vessels associated with each of the practices and discharge categories

identified in the sVGP, and with the inspection and recordkeeping requirements. Overall, EPA finds that sVGP requirements could result in total annual incremental costs for domestic vessels ranging between $7.0 million and $12.1 million (2010$), in the aggregate. This includes the paperwork burden costs and the sum of all practices for applicable discharge categories. Per vessel incremental compliance costs average between $17 and $98 per year, depending on the number of applicable discharge categories and baseline practices. As with the VGP economic analysis, EPA evaluated economic impacts of sVGP requirements on the affected industries, and performed a firm-level analysis. Since nearly all firms in the affected industries are small, the firm-level analysis focuses on assessment of impacts on small businesses. Further, given the distribution of revenue among firms in the affected industry sectors which suggests a relatively greater potential for impacts to small firms in the commercial fishing industry, EPA looked more specifically at this industry when assessing the significance of impacts. As with the VGP, to evaluate the potential impact of the sVGP on small entities, EPA used a cost-to-revenue test to evaluate the potential severity of economic impact on vessels and facilities owned by small entities. The test calculates annualized pre-tax compliance cost as a percentage of total revenues and uses a threshold of 1 and 3 percent to identify facilities that would be significantly impacted as a result of this Permit. Based on this firm-level analysis, EPA concludes that the sVGP will not, if issued, have a significant economic impact on a substantial number of small entities based on information showing that few firms have revenue below those where the compliance costs would exceed the one percent cost-to-revenue threshold under high end cost assumptions.

3. *Benefits of the draft VGP and draft sVGP*. Although EPA was unable to evaluate the expected benefits of the permits in dollar terms due to data limitations, the Agency collected and

considered relevant information to enable qualitative consideration of ecological benefits and to assess the importance of the ecological gains from the revisions. EPA expects that reductions in vessel discharges will benefit society in two broad categories: (1) enhanced water quality from reduced pollutant discharges and (2) reduced risk of invasive species introduction.

Because many of the nation's busiest ports are considered to be impaired by a variety of pollutants found in vessel discharges, reducing pollutant loadings from these discharges is expected to have benefits associated with the reduction of concentrations of nutrients, metals, oil, grease, and toxics in waters with high levels of vessel traffic.

E. Executive Orders 12866 and 13563. Under Executive Order (EO) 12866 (58 FR 51735 (October 4, 1993)) this action is a ''significant regulatory action.'' Accordingly, EPA submitted this action to the Office of Management and Budget (OMB) for review under Executive Orders 12866 and 13563 (76 FR 3821, January 21, 2011) and any changes made in response to OMB recommendations have been documented in the docket for this action.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq*.

Dated: November 30, 2011.

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EPA Region 1.

Dated: November 30, 2011.

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Division of Environmental Planning and Protection, EPA Region 2.

Dated: November 30, 2011.

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Water, Wetlands and Pesticides Division, EPA Region 7.

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Stephen S. Tuber, Assistant Regional Administrator

Office of Partnerships and Regulatory Assistance, EPA Region 8.

Dated: November 30, 2011.

Alexis Strauss, Director Water Division, EPA Region 9.

Dated: November 30, 2011.

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[FR Doc. 2011-31576 Filed 12/07/2011 at 8:45 am; Publication Date: 12/08/2011]